

**THE LABOR COMMISSION
WORKERS' COMPENSATION ADVISORY COUNCIL**

**Wednesday, January 28, 2009 - 12:15 P.M.
Seagull Room, Utah State Capitol
Salt Lake City, Utah**

The following Advisory Council members were in attendance:

Ralph Astorga, President USWA Local 392
Dawn Atkin, Esq.
Thomas Bingham, President, Utah Manufacturers Association
David Bird, Esq.
Reo Castleton, SL County Fire Department
Brandt Goble, Painters and Tapers Local 77
Edward Holmes, M.D., RMCOEH
Susan Kelly, Liberty Mutual
James V. Olsen, President, Utah Food Industry Association
Ray Pickup, Workers Compensation Fund
Jeff Rowley, Risk Manager, Salt Lake County
Richard J. Thorn, President/CEO, Associated General Contractors - Utah Chapter
Brad Tibbitts, Utah State Insurance Department

The following Advisory Council members were excused:

Brian Kelm, Esq.

Legislative Liaison present:

Senator Karen Mayne

Others Present:

Sherrie Hayashi - Commissioner
Alan Hennebold - Deputy Commissioner
Larry Bunkall, Industrial Accidents Division Director, Labor Commission
Robyn Barkdull - Public Information Officer, Labor Commission
Ron Dressler - Policy Director, Labor Commission
Elena Bensor - Workplace Safety Grant Manager, Utah Labor Commission
Kim Hood - Director – Department of Administrative Services
Sal Petilos - Deputy Director - Department of Administrative Services
Dave Johnson - Director - Office of State Debt Recovery
Bill Evans - Attorney General's Office
Laura Hancock - Deseret News
Mark Metcalf - Attorney General's Office

WELCOME

1. Welcome - Commissioner Hayashi

Commissioner Hayashi brought the meeting to order at 12:15 p.m.

2. Miscellaneous Business - Approval of Minutes

Dawn Atkin moved to approve the minutes of the November 20, 2008 meeting. **Ralph Astorga** seconded the motion which passed unanimously.

3. Presentation by Office of State Debt Collection (OSDC) on UEF Collections

Kim Hood and **Dave Johnson** made a presentation to the Council on the efforts made by the OSDC to collect penalties associated with employers who are found to be non-compliant in having workers' compensation insurance. They said they had reviewed their past collection process, taken Commission concerns and suggestions into consideration, and made changes which have now resulted in OSDC's greater effectiveness to meet the needs of the Commission.

Council members pointed out that current law requires the Commission to use the OSDC to collect these penalties, yet past experience has shown the OSDC to be less effective in collecting penalties than a private contract attorney. Council members felt the Commission had a unique situation with this Fund as it is not funded by taxpayers. It is completely funded by employers through a percentage of their workers' compensation premium. As this money is directly used to fund the UEF, the Commission is very dependent on these funds and would like to have the option of collecting through the most effective source.

Ms. Hood and Mr. Johnson said with the hiring of Mr. Metcalf who was the previous private attorney collecting for the Commission, this should result in better service with more funds collected for the UEF. **Ms. Hood** also stated she did not see a unique situation for the UEF and believed the Fund fell under the state's statutory requirements for using the OSDC to collect any penalties due.

Discussion was held concerning the problems associated with having no other recourse than OSDC to collect these penalties. The consensus was that the Commission should have the capability of directly collecting penalties through a private attorney as an alternate source, in the event there are staffing problems or other unforeseen situations which may arise within OSDC. This is the intent of H.B.271, Workers' Compensation – Uninsured Employers' Fund, which had been drafted at the request of the WCA Council following a previous meeting. It was agreed that the Commission would continue to work with the Department of Administrative Services and also the Attorney General's Office regarding this issue, but would pursue the legislation.

Commissioner Hayashi thanked the Department of Administrative Services and Office of State Debt Collection for their efforts and for incorporating the changes into their collection process in behalf of the Commission's needs.

4. Presentation on Workplace Safety Account and 2009 Projects – Elena Bensor

Ms. Bensor distributed an overview of the projects which was briefly reviewed by the Council. She also reviewed the budget for the 2009 projects in progress. Ms. Bensor said the grant application process for FY10 will begin in March.

Commissioner Hayashi explained there is \$95,000 in unallocated funds in the Workplace Safety Account and the Commission would like to produce a public service announcement (PSA) to promote the new online service, Workers' CompCheck, which allows anyone to find out if an employer carries required workers' compensation insurance. She said the PSA would cost about \$5,000 to produce and air time would be purchased in the amount of between \$50,000 to \$60,000.

Larry Bunkall expressed his support of the project and encouraged the Council to approve the use of the funds as this was a much needed service for everyone.

A few employer representatives expressed concerns that the funding of the PSA to promote the Workers' CompCheck services was not closely enough related to the Workplace Safety Account (WSA) and may not be an appropriate use of WSA funds. **Ms. Atkin** suggested perhaps the UEF should be the appropriate funding source for this project.

Dr. Holmes suggested the service also provide some direction in the online process to direct medical providers as to appropriate steps to follow in the event they determine a patient with a workplace injury is not covered by the injured workers' employer.

This agenda item was tabled and will be discussed further at the next meeting of the Council in April.

5. Presentation on LC Budget Cuts and Proposed New Funding – Industrial Accidents Restricted Account – Commissioner Hayashi

Commissioner Hayashi explained that First Substitute S.B.15, Workers' Compensation Premium Assessment and Related Funding, sponsored by **Senator Mayne**, provided for new funding called the Industrial Accidents Restricted Account (IARA), for the Industrial Accidents Division, through a .50 of 1% assessment on all WC insurance premiums. This will help offset any general fund reductions for FY09/FY10 and provide an appropriate new funding source, the IARA, to cover administrative costs of the workers' compensation system.

Senator Mayne thanked all of those who had assisted her in creating this new fund, making four funds out of the three current funds and enabling the Commission to put everything in its right place. She applauded this as a great team effort and an example of employees/employers working together to protect the integrity of the Commission's funding sources.

MOTION: Dawn Atkin moved to have the WCA Council go on record in support of First Substitute S.B. 15, Workers' Compensation Premium Assessment and Related Funding, sponsored by **Senator Mayne**, **Ralph Astorga** seconded the motion which passed unanimously.

6. REVIEW AND TAKE ACTION, AS NEEDED, ON WC LEGISLATION – Alan Hennebold

Mr. Hennebold reviewed additional items on the WC legislative tracking sheet which had not already been discussed:

H.B. 32, Amendments to Agency Rulemaking Regarding Criminal Penalties, Rep. Ben Ferry.

This bill removes criminal penalties for violation of Industrial Accidents Division rules. The penalties involve medical providers' failure to submit forms. The provision has not been used and IAD doesn't object to the removal of these penalties. It is expected to pass.

H.B. 39, Utah Injured Worker Reemployment Act, Rep. Mike Morley.

This legislation eliminates the position of Reemployment Coordinator in the current statute and provides insurers to file reports with IAD on rehabilitation activities. H.B. 39 passed the House on 1/27/09.

H.B. 224, Health Care Provider Abusive Work Environment, Rep. Stephen Sandstrom.

This legislation creates civil cause of action for "abusive employment practices" in government-run health care programs. It allows choice between WC and civil action and permits limited LC rule-making.

H.B. 271, Workers' Compensation – Uninsured Employers' Fund, Rep. Mike Morley.

Although this bill had been discussed earlier in the meeting, no official action had been taken by the Council.

MOTION: Dawn Atkin moved to have the WCA Council go on record in support of H.B. 271, Workers' Compensation – Uninsured Employers' Fund, Rep. Mike Morley. **Ralph Astorga** seconded the motion which passed unanimously.

S.B. 120, Workers' Compensation Act – Medical Reports, Sen. Karen Mayne

This eliminates the statutory requirement to send medical reports by certified mail.

MOTION: Dawn Atkin moved to have the WCA Council go on record in support of S.B. 120, Workers' Compensation Act – Medical Reports, Sen. Karen Mayne. **Ralph Astorga** seconded the motion which passed unanimously.

S.B. 121, Workers' Compensation – Attorney Fees, Sen. Karen Mayne

This legislation had been agreed upon in a previous WCA meeting. It broadens the LC authority to add on attorney fees in claims involving medical benefits and less than \$4,000 disability benefits.

MOTION: Dawn Atkin moved to have the WCA Council go on record in support of S.B. 121, Workers' Compensation – Attorney Fees, Sen. Karen Mayne. **Ralph Astorga** seconded the motion which passed with Jeff Rowley voting in the negative.

Another proposed piece of legislation dealing with the social security offset on workers' compensation benefits is under consideration by Rep. Harper, but drafting of a bill is being delayed pending a Utah Supreme Court case decision. **Jim Olsen** encouraged **Commissioner Hayashi** to meet with Rep. Harper and discuss the ramifications of such legislation.

Commissioner Hayashi reminded the Council that the next WCA Council meeting will be held April 8, 2009, at 11:30 at the Labor Commission.

The meeting adjourned at 1:55 p.m.